United Nations S/2007/164

Security Council

Distr.: General
22 March 2007

Original: English

Letter dated 19 March 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Spain submitted pursuant to resolution 1624 (2005) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ricardo Alberto **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Report of Spain on the implementation of Security Council resolution 1624 (2005) on further measures to combat terrorism

What measures does Spain have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Acts that can generically be categorized as "incitement to terrorism" have been prohibited for some time under Spanish law (Penal Code), which prevents and punishes three different forms of such conduct, defined according to the seriousness of the acts concerned.

In a general manner, article 18.1 of the Penal Code criminalizes provocation and, within that category, *apologie* as a form of provocation; that is, as an attempt to induce another person to commit an actual offence.

"Provocation shall mean direct incitement, through the press, radio or any other similarly effective means of publicity, or before a group of individuals, to the perpetration of an offence.

"*Apologie*, for the purposes of this Code, shall mean the expression, before a group of individuals or by any other means of communication, of ideas or doctrines that extol crime or glorify the perpetrator thereof. *Apologie* shall be criminalized only as a form of provocation and if its nature and circumstances are such as to constitute direct incitement to commit an offence."

Such inchoate offences are punishable only where the law expressly so provides. In this connection, article 579.1 of the Penal Code notes that:

"Provocation, conspiracy and solicitation to commit the offences referred to in articles 571 to 578 (terrorist offences) shall be punishable by a penalty one or two degrees below that which applies, respectively, to the acts referred to in those articles".

If the provocation or direct incitement to commit a terrorist offence is followed by the perpetration of such an offence, the person is regarded as an instigator and punished as a principal perpetrator, in accordance with article 28 of the Penal Code.

Furthermore, with a view to penalizing *apologie* in relation to terrorism separately and to a greater degree than the *apologie* covered by article 18 of the Penal Code, Organic Law No. 7/2000 of 22 December reformed article 578 of the Penal Code by defining a new criminal offence (glorification of terrorism) applicable to acts other than terrorism that create profound popular revulsion.

This article provides that "glorification or justification, through any form of public information or communication, of the offences referred to in articles 571 to 577 hereof or of persons having participated in their perpetration, or the commission of acts tending to discredit, demean or humiliate the victims of terrorist offences or their families, shall be punishable by one to two years' imprisonment. The judge may also impose as part of the sentence, for such time as the judge may specify, any or all of the prohibitions provided for in article 57 hereof".

Within this category of offence, two different types of criminal conduct are penalized: glorification or justification of terrorist offences or their perpetrators, and humiliation of the victims of terrorist offences or their families. A common premise underlying the definitions of both types of conduct is that they relate to the terrorist offences referred to in articles 571 to 577 of the Penal Code.

The definition of this offence should be understood from the standpoint of full respect for fundamental rights and freedoms such as freedom of expression and information. Accordingly, the statement of reasons pertaining to the above-mentioned Organic Law explains that "The acts penalized herein, separately from the acts referred to in article 18 of the Penal Code, constitute not only aid and support to very serious criminal acts and to their sustainability and durability, but also a very obvious manifestation of how various means can be used to generate collective terror in order to advance terrorist aims. The law's intent is evidently not to prohibit the extolling or defence of ideas or doctrines, however far they may diverge from or even challenge the constitutional framework, let alone prohibit the expression of subjective views on historical or current events. On the contrary, the intent is simply to penalize the glorification of terrorist methods, which are fundamentally illegitimate from any constitutional perspective, or of the perpetrators of terrorist offences, as well as the particularly perverse conduct of those who defame or humiliate the victims, thereby increasing the horror suffered by their families. All such acts are regarded with incomprehension and indignation by society and deserve a clear criminal sanction".

In its case law, the Constitutional Court (judgement of 12 December 1986) highlights the essential role played by freedom of expression in a democratic society and the need for a narrow interpretation of offences that pertain to this freedom.

In recent years, the European Court of Human Rights has built up an ample body of jurisprudence that serves as a guide to interpretation and indicates that certain restrictions on freedom of expression vis-à-vis conduct that may constitute incitement to violence or have a particular impact in a context of terrorism, such that it may increase disturbances or foment hatred or hostility, may be legitimate and necessary in a democratic society.

According to a Supreme Court decision handed down on 23 May 2002, the conduct referred to in article 578 (*apologie* of terrorism) is not a terrorist offence. Rather, *apologie* is prosecuted as an offence (of opinion) that relates to a separate offence, which represents its object: terrorist offences (dealt with in articles 571-577), with which it should not be confused.

When the conduct referred to in article 578 of the Penal Code can be subsumed under article 579 as a form of provocation, the application of the latter provision will take precedence, by virtue of the principle of specificity.

It should be noted that on 16 May 2005, Spain signed the Council of Europe Convention on the Prevention of Terrorism, which penalizes provocation to commit a terrorist offence (art. 5) and calls upon States to promote tolerance by encouraging inter-religious and cross-cultural dialogue (art. 3).

What measures does Spain take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

The implementing regulations (Royal Decree No. 2393/2004) for Organic Law No. 4/2000 on the rights, freedoms and social integration of aliens in Spain, in article 10 concerning grounds for refusing admittance to aliens and barring their access to Spanish territory, refers, inter alia, to persons whose entry has been expressly prohibited by a decision of the Minister of the Interior as a result of their having engaged in activities that are contrary to the interests of Spain or in violation of human rights, or of their having well-known connections with national or international criminal organizations or of other legal or administrative circumstances warranting the adoption of such a measure, without prejudice to their detention, where appropriate.

Conversely, with respect to expulsion from the national territory, Organic Law No. 4/2000 classifies as a very serious offence (art. 54), which can result in expulsion following appropriate administrative proceedings, participation in activities that undermine the external security of the State or that may be detrimental to Spain's relations with other countries.

Aliens can also be expelled, following appropriate proceedings, if they are convicted, in Spain or elsewhere, of fraud, which in our country is punishable by at least one year's imprisonment, unless the person's criminal record has been expunged.

How does Spain cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

In view of the specific border relations between neighbouring countries within the Schengen area, Spain has established joint police stations with Portugal and police and customs cooperation centres with France and has implemented other strengthened cooperation mechanisms such as cross-border pursuit, cross-border surveillance and police assistance for the prevention and investigation of criminal acts, including acts of terrorism.

The False and Authentic Documents (FADO) system, a European image archiving system adopted by the Council of the European Union in 1998, has been developed and implemented for the purpose of exchanging, by computerized means, information concerning genuine and false documents that have been recorded, containing images of false and forged documents, images of genuine documents and summary information on forgery techniques and security techniques. It also has a system for sending a warning to all member States about a particular false document via e-mail.

The Advanced Passenger Information System (APIS) has been developed and implemented to improve border inspection systems by providing the destination country's border control authorities with passenger information collected by air and sea carriers after boarding has been completed.

A new electronic National Identity Document (DNI-e) has been designed pursuant to Royal Decree No. 1153/05, with improvements in the document's security features to prevent forgeries.

Pursuant to Royal Decree No. 896/2003, a new passport has been developed and introduced, incorporating new security features, biographical and biometric data, digitalization and optical data recognition.

What international efforts is Spain participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

In September 2004, at the fifty-ninth session of the United Nations General Assembly, the President of the Spanish Government proposed the idea of an Alliance of Civilizations. Subsequently, in July 2005, the initiative was formally launched by the Secretary-General of the United Nations. This initiative is based on the idea that it is necessary to reverse the negative direction that mutual perceptions between the Western world and the Arab-Muslim world seem to be taking, which is being fomented by extremists. At the same time, the Alliance of Civilizations aspires to be an alliance against all forms of extremism, which today pose a threat to every country and society. The initiative seeks to emphasize that international counter-terrorism efforts should be based on cooperation among all Governments and on an understanding of this phenomenon in all its dimensions and circumstances.

To implement the initiative, in September 2005 the Secretary-General of the United Nations appointed a High-level Group with a mandate to submit, by the end of 2006, a set of practical recommendations and initiatives that could be translated into political actions by Governments, international organizations and civil society.

As one of the sponsors of the initiative (along with Turkey), Spain has supported and closely followed the work of the High-level Group. To date, the Group has met three times (in Palma de Mallorca in November 2005, in Doha in February 2006 and in Dakar in May 2006). The participants in these meetings have identified four main fields of action into which the practical recommendations are grouped: education, youth, migration and media, to which the cross-cutting issue of gender has been added. The Group will submit these recommendations, together with policy recommendations, to the Secretary-General by the end of the year.

Within a very short time, the Alliance of Civilizations has come to be seen as an innovative tool that the international community can use in addressing a problem: the increasingly negative trend in mutual perceptions between the Western world and the Arab-Muslim world. The Alliance has raised great expectations and enjoys the credibility which this auspicious beginning has given it, both of which — expectations and credibility — are of no small importance in relation to a problem that is largely one of perceptions and that affects the different world views held by States and societies.